

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.

WRIT PETITION NO. 8153 OF 2018

Devsing Gulabsing Rathod Petitioner

Versus

The State of Maharashtra & Ors. Respondents

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Ms Sneha Jagtap h/f Shri. V. D. Sapkal, Advocate for the petitioner
Shri. A. R. Kale, AGP for respondents No. 1 and 2
Shri. Nitin S. Choudhary, Advocate for respondent No. 3

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**CORAM : S. V. GANGAPURWALA
AND
A. M. DHAVAL, JJ.**

DATE : 1ST APRIL, 2019

ORAL ORDER:

1. We have heard learned counsel for the petitioner and the respondents.

2. Shri. Nitin Choudhary, learned counsel for respondents No. 3 submits that, under the Government Resolution dt. 20.05.1999, the post of Assistant Junior Engineer, Mistry Grade-I, Mistry Grade-II, Road Karkoon, Muster Clerk and Time Keeper were merged into the post of Civil Engineering Assistant. The post of Tracer was not included in the said Government Resolution, however, as per the

Corrigendum dt. 05.08.2003, the post of Tracer was also included in the list of the posts detailed in the Government Resolution dt. 20.05.1999. At the relevant time, the petitioner was not possessing the qualification of Civil Engineering Assistant. He was promoted to the post of Junior Draftsman. The post of Junior Draftsman does not find place in the Government Resolution dt.20.05.1999 and the Corrigendum dt. 05.08.2003. In view of that, the petitioner could not have been considered for the post of Civil Engineering Assistant. Whereas Shri. Bhangale was working as a Tracer on the relevant date when he had passed the examination of Construction Supervisor in April – 2008 and as such is appointed as Civil Engineering Assistant. The petitioner's case cannot be equated with Shri. Bhangale as the petitioner was promoted as a Jr. Draftsman and the said post did not merge with the post of Civil Engineering Assistant as per Government Resolution dt. 20.05.1999 and Corrigendum dt. 05.08.2003. In view of that, the Commissioner and the authorities have rightly considered the case. The learned advocate also further submits that, petitioner would not be entitled for the benefit as claimed by him in view of clause 6 of the Clarification dt. 13.03.2013.

3. We have considered the submissions.

4. It is a fact that, the petitioner was appointed as Tracer on 30.12.1994 and Shri. Bhangale was appointed as Tracer in the year 2000. Under the GR dt. 20.05.1999, some of the posts were merged with the post of Civil Engineering Assistant. Post of tracer was not included in the same. The Government issued Corrigendum dt.05.08.2003 thereby directing that the post of Tracer shall be read with the posts specified in the Government Resolution dt. 20.05.1999 meaning thereby the post of Tracer also merged with the posts of Civil Engineering Assistant however, qualification for the post of Civil Engineering Assistant was not possessed by the petitioner. The petitioner secured the said qualification of Construction Supervisor in April-2008. The Government Resolution dt. 27.05.2008 provides that, the qualification of Construction Supervisor is equivalent to the qualification of Civil Engineering Assistant. Shri. Bhangale is absorbed as Civil Engineering Assistant in the year 2008. He also secured qualification of Construction Supervisor in April 2008. The reason given for absorbing Shri. Bhangale as Civil Engineering Assistant in the year 2008 is that he was working as a Tracer and was possessing the qualification of Construction Supervisor i.e. equivalent to qualification of Civil Engineering Assistant and as per Government Resolution dt. 20.05.1999 and 05.08.2003 the post of Tracer is the one which has merged into the post of Civil Engineering Assistant

and as such is considered. However in the interregnum the petitioner was promoted to the post of Jr. Draftsman and as the post of Jr. Draftsman is not included in the Government Resolutions dt. 20.05.1999 and 05.08.2003, the petitioner cannot be considered for the post of Civil Engineering Assistant.

5. Such a submission is difficult to comprehend. A person who is much senior and possessing the same qualification is at a disadvantageous position. If same is allowed to continue, that would lead to egregious injustice.

6. The petitioner was much senior to Shri. Bhangale. The petitioner acquired the qualification for Civil Engineering Assistant on the same day when Shri. Bhangale acquired and still the petitioner is not being considered for the post of Civil Engineering Assistant only on the ground that the petitioner was in the interregnum promoted to the post of Jr. Draftsman. Such a situation cannot be comprehended.

7. It is submitted that the petitioner has been considered for the post of Civil Engineering Assistant in the year 2015 on account of relaxation of age. This argument also go against the respondents.

On one hand the respondents accept that the petitioner on getting exemption from qualifying examination after attaining the age of 45 years, he is entitled for the post of Civil Engineering Assistant and though he possesses the necessary qualification for the post of Civil Engineering Assistant in the year 2008, he is not considered for the post of Civil Engineering Assistant. The same would be a paradox.

8. In light of the above, the petitioner shall be deemed to have been absorbed on the post of Civil Engineering Assistant on the date Shri. Bhangale has been absorbed. The same shall be done notionally to the petitioner and be placed in the seniority list accordingly. Though we have granted deem date to the petitioner, the petitioner would not be entitled for the actual monetary benefits for the interregnum period, however, for all further purposes the petitioner shall be deemed to be on the post of Civil Engineering Assistant from 28.04.2008. The notional increment to the petitioner shall be allowed accordingly.

9. The Writ Petition is accordingly disposed of. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE